IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2137 OF 2006

Punjab National Bank ... Petitioner

V/s

Shri Narain Bhojwani & ors. ... Respondents

Ms. Nipa Singh i/by M/s. Mahesh Menon & Co. for the petitioner.

Mr. S.G. Anuj i/by P.K. Shroff & Co. for the respondents 1 & 2.

CORAM: P.V. KAKADE, J.

DATED: 25TH APRIL, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner tenant Bank has preferred this petition against the judgment and order dated 22.12.2005 dismissing the appeal and confirming the judgment and order passed by the Trial Court dated 2.9.2003 decreeing the respondent plaintiffs' suit for eviction of the present petitioner from the suit premises.

3. The respondent plaintiffs filed the suit for eviction against the defendant Bank stating that the suit premises admeasuring about 1846 sq.ft. and additional area of 910 sq.ft. is situated on the ground floor and 1003 sq.ft. of basement together with the use of the upper tenant compound in the building known as "Shailaja Co-op. Housing Society Ltd., located at Pali Hill Road, Bandra (W), Mumbai - 400 050. It was submitted that defendants' predecessors were the tenant of the suit premises on monthly rent of Rs.4,547/- from 15.12.1976 on the terms and conditions set out in indebenture of lease dated 3.4.1979. The defendants thereafter has taken over the banking business of of new Bank of India Ltd. which was the original lessee of the suit premises under the lease. The defendants are admittedly not protected under the Maharashtra Rent Control Act being Nationalized Bank coming under the purview of Sec. 3(1)(b) of the said Act and it is the case of the plaintiffs that defendants' tenancy came to an end by influx of time as they are not protected under the said Rent Act. Plaintiffs further submit that they terminated the tenancy by notice dated 21.7.2000 calling upon the defendants to vacate the premises. The notice was issued under the provisions of the Transfer of Property Act. The defendants did not comply with the

notice and continued with the possession. Hence the suit.

4. Defendants inter-alia denied the allegations claiming that the tenancy rights subsisted by virtue of completed contract between the parties and on such and other grounds the suit was sought to be dismissed.

5. The learned Trial Judge, after hearing both parties and on the basis of available evidence, came to the conclusion that there was no completed contract between the parties and the notice dated 21.7.2000 was a valid notice terminating the tenancy of the defendants and, as such, by virtue of the provisions of the Transfer of Property Act, the defendants were liable to be evicted from the suit property and decree came to be passed.

6. The appeal was carried to the lower appellate Court, who, after hearing both parties, concluded that the reasoning adopted and findings recorded by the learned Trial Judge were legal and proper and, therefore, the appeal came to be dismissed. Hence the petition.

7. At the outset, it may be noted that the learned counsel for the petitioner sought to put reliance on two

proposals given by the respondent plaintiffs dated 19.8.1999 and 28.10.1999 with submission that those proposals were revival of the agreement between the parties. However, it is to be noted that the suit was filed in the month of October, 2000 followed by the notice of termination dated 27.7.2000. The so-called acceptance of the proposal by the petitioner was subsequent to the filing of the notice and, therefore, it cannot be said that there was concluded contract between the parties nor can it be said that the respondent plaintiffs had accepted the proposal when the suit for eviction was already pending.

8. The learned counsel for the petitioner brought to my notice the document dated 21.7.2000 which is said to be notice of termination of the tenancy. After going through the contents of the said notice, one must agree that it is not very happily worded, however, for all practical purposes the intent of the respondent plaintiffs is made clear to the effect that he intended to terminate the tenancy of the petitioner by virtue of his notice dated 21.7.2000. Both the Courts below appear to have appreciated the fact that there was no concluded contract to extend the lease of the petitioner, which, in my view, appears to be legal and

proper and that view is taken up on the basis of the available record and, therefore, it would brook no interference by virtue of provision of Art. 227 of the Constitution of India.

9. In the result, the petition appears to be devoid of merits and stands dismissed with no order as to costs.

10. At this stage, the learned counsel for the petitioner sought some time to vacate the premises. The fact that the petitioner is a nationalized bank, it is obvious that they will require some time to seek alternative premises and, therefore, it is directed that the decree for eviction shall not be executed for the period of six months from the date of this order on the condition that the petitioner shall furnish undertaking of its responsible officer to that effect and on conditions that they will not create third party interest and shall continue to pay the agreed rent during the period of occupancy. The undertaking to be filed within two weeks from the date of this order.

With these directions, the petition stands disposed of with no order as to costs.

10. It is clarified that, in the event the undertaking is not filed within two weeks, the respondent plaintiffs shall be entitled to execute the decree immediately.

.....